

(2004). APR is an interested party in the UNCITRAL Arbitration—the proceeding for which the discovery is sought. The discovery sought is for use in the UNCITRAL Arbitration. ANZ Bank can be found in this district and is not a party to the UNCITRAL Arbitration.

Further, APR satisfies all of the discretionary factors set forth in *Intel*. APR is not using this proceeding as an attempt to circumvent the requirements of any foreign or international tribunal. There is no indication that this Application or the discovery sought herein is precluded by any relevant laws and rules relevant to the UNCITRAL Arbitration. Finally, the discovery APR seeks is highly relevant to the arbitration proceeding, and it is narrowly tailored. As a further matter, granting the relief sought in this Application would further the dual goals of Section 1782, which are to efficiently assist litigants in foreign or international proceedings and to promote similar assistance to U.S. courts by foreign or international tribunals. *See Gushlak v. Gushlak*, 486 F. App'x 215, 218 (2d Cir. 2012).

Applications for judicial assistance pursuant to Section 1782 typically are initiated on an *ex parte* basis. Upon service of the subpoena, the subpoenaed party then has the opportunity to assert objections to the subpoena based on attorney-client privilege or other applicable grounds. *See In re Letters Rogatory from Tokyo Dist.*, 539 F.2d 1216, 1219 (9th Cir. 1976). In the event ANZ Bank wishes to challenge the subpoena, it has the opportunity to present its objection(s) through a motion to quash or for protective order pursuant to the relevant Federal Rules.

ADDITIONAL REQUESTS

APR is concerned that some of the documentary evidence sought may be lost or jeopardized by the document retention policies of the ANZ Bank. For this reason, APR requests that ANZ Bank be directed to preserve any such potentially relevant evidence that might otherwise be subject to manual or automatic deletion.

Lastly, APR respectfully requests leave to serve additional subpoenas on ANZ Bank or on any other persons residing or found within the Southern District of New York for documents relevant to the UNCITRAL Arbitration. APR anticipates that ANZ Bank's responsive documents may lead to the need for additional subpoenas for documents relevant to the UNCITRAL Arbitration. Before serving any additional subpoena, APR will serve a notice of intent to serve subpoena, and, in the event of any objection thereto, will seek a ruling on the objection prior to serving the additional subpoena.

WHEREFORE, Applicant respectfully requests that this Court enter an Order²:

1. Approving APR's Application;
2. Granting APR leave to serve upon ANZ Bank the Subpoena in substantially the same form as Exhibit B hereto;
3. Directing ANZ Bank to produce the documents as requested in Schedule A of the Subpoena;
4. Directing ANZ Bank to preserve all potentially relevant evidence that might be subject to manual or automatic deletion; and
5. Granting Applicant leave to issue additional subpoenas for documents and/or depositions to ANZ Bank, or any other person residing or found in the Southern District of New York likely to have relevant evidence to be used in the UNCITRAL Arbitration, fifteen days after filing a notice of intent to serve subpoena and upon the resolution of any timely objection that may be filed by the party to be served.³

² A proposed Order is attached hereto as Exhibit A.

³ Applicant's basis for the relief sought in this subsection is explained more fully in the memorandum of law filed concurrently with this Application.

Dated: April 18, 2017

s/ Peter H. Levitt

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